The Effect of Unitary and Federal State Structures on Governance in the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland

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Introduction

Germany and the United Kingdom offer case studies of two extremes of government structure in Europe. Germany is a federal state with organically evolving regions at the *länder* (State) and local levels. Conversely, the United Kingdom focuses its government in a centralized parliament responsible for the control of the four nations which it contains. In the United Kingdom all local and regional power is delegated by the central government, whereas in Germany the *länder* are strong veto players (Herschel and Newman, 2000). The factors that contributed to the development of these systems were disparate, and the outcome can attest to the difference in the political cultures of the two nations. Currently, the United Kingdom is undergoing many changes to its system that some might argue are pushing it towards a federalist future. In Germany, the over-politicization of the Bundesrat is leading some to question the viability of such strong bicameralism (Bräuninger and König, 1999). The effectiveness of each system will be studied and the contexts in which each excels will be considered. The contrasting systems evolved in different contexts, though with the current European integration these disparities are eroding. The new set of factors that the governments face may force them to continue to evolve, to a state of governance somewhere between a federal and a unitary state.

The German Federal State

The bicameral legislative branch of the German government contains the Bundestag, lower chamber, and the Bundesrat, upper chamber. Parties concern themselves first with the Bundestag, as a majority in this chamber is necessary in selecting a

government. The Bundestag is the chamber that most accurately represents the people of Germany as many of the parliamentarians are directly elected. The Bundesrat represents the *länder*, the internal territorial and political entities that make up the federation in Germany. The *länder* are each allowed a certain representation depending upon their population (Hancock et al, 2003). The Bundestag concerns itself with all legislation. A majority in this house is necessary to move legislation to the Bundesrat. It is here that the *länder* are able to exercise their veto. Legislation that in any way affects the government of the *länder* is deemed "mandatory" and requires a majority vote to enact the legislation. In the case of "non-mandatory" legislation, the Bundesrat may reject the proposal from the Bundestag with an absolute majority. In such a case, the Bundestag must vote once again and can overrule the Bundesrat rejection with a corresponding majority (Bräuninger and König, 1999). In both cases the Bundesrat is able to exercise a veto; however, it is over the mandatory legislation that the chamber is able to achieve the most influence.

The Federal Republic of Germany includes thirteen *länder* and three *freistaaten* (free states). While formally divided and separately governed, there are many local and regional quasi-governmental organizations and economic cooperation agreements that span borders and divide the country further. Common interests and ideology often lead to these informal networks that are gradually receiving federal recognition as viable alternatives for the enactment of policies at the local level (Herschel and Newman 2000). In practice it is the *länder* that are left with the

responsibility for the enactment of government, and even European Union, policy initiatives. This aspect of governance introduces yet another veto point, for even if the Bundesrat adopts legislation the länder may simply disregard it. Thus the federal structure of Germany leaves many options open for the länder to exercise their power, not surprising considering that the federal state was created with the centralization of power in 1930s in mind. This incredibly strong federal structure is acting exactly as it should, however, it does leave the state vulnerable to legislative deadlock.

The Unitary State of the United Kingdom

The bicameral legislative branch of the United Kingdom is structured much differently from that of Germany. Even following the reforms of the Labour government the House of Lords, the upper chamber still contains hereditary peers representing no constituency but their own family name, though they are now few in number. The upper chamber is weak compared to the Bundesrat and can do little more than delay most legislation of the House of Commons, the true seat of government. This asymmetrical bicameralism reduces the number of veto players with which the government must contend, and with the high degree of party loyalty in the House of Commons, governments rarely face much opposition to their policies. The unitary nature of government in the United Kingdom means that previous to the reforms of the Labour Party, regional governments existed only to act in accordance with direction from Westminster (Hancock et al, 2003). Though essentially made up of four separate nations, these states had no voice in government prior to the

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creation of the Scottish Parliament and the Welsh Assembly. The regional government of Northern Ireland remains, essentially, under the authority of a centralized government, i.e., what London gives it can also take away. In only two years following election the New Labour government had created these provisions as well as the Greater London Authority (Travers, 2002). However, Westminster still holds definitive control over Edinburgh, and over all of the United Kingdom, in a unitary state. Devolution does not mean federalism.

The devolution of government came in several parts. The Scottish Parliament was created to be a subordinate parliament of the unitary state. Subservient to Westminster, but autonomous, Edinburgh is free to vote on matters relevant to Scotland without interference of MPs from England or Ireland. The Scottish Act specifically allows for the supremacy of the United Kingdom's parliament and, as such, the central government retains veto power over the Scottish Parliament. The division of powers between parliaments will be overseen by the Judicial Committee of the Privy Council, as outlined in the Scotland Act: however, this occurs only in cases in which jurisdiction over legislation is questioned (Bogdanor, 1999). The Greater London Authority allows for greater local control over the city and the area surrounding it. The mayor of London will now be directly elected. However, even before the first election Prime Minister Blair exercised tight control over the election through party selection of the candidates. Preventing the former leader of the Greater London Council, Ken Livingstone, to run for the post under the Labour party, his own party, is a

show of power; though he was able to secure the job without Labour's support. In the end, Westminster rejects challenges to its control over the unitary state (Economist, 2000). The Welsh Assembly enjoys even less autonomy than the Scottish Parliament and, in practice, is little more than a directly elected committee on Welsh affairs. Without devolution to the regions of England, the United Kingdom will be far from a federal state. With over 80% of the population residing in England, no federal state of only four nations, England, Wales, Scotland and Northern Ireland, could ever exist without being dominated by England (Hopkins, 2004). Therefore, aside from possible devolution to English regions stemming from the "Your Region, Your Choice" White Paper, the United Kingdom must remain a unitary state in order to effectively govern its territories (Travers, 2002).

Effectiveness of Federalism and Unitarianism in Context

Whether federal or unitary, the test of government is its ability to effectively govern its people. In Germany this is ensured by guaranteeing the representation of local interests at a national level in the Bundesrat. The länder are able to control their funding and taxation and, in theory, the people's needs as assessed by their local government are more accurately represented here, despite the lack of direct elections to this chamber. The designation of the länder as the implementers of policies also attracts the attention of the European Union. EU policies often need to be enacted locally as well as at a national level (Herschel and Newman, 2000). National environmental regulation would mean little if the

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länder refused to take part. As a result, the citizens of Germany take a more active part in European integration than their counterparts in the United Kingdom. Overall, the federal state has worked well for Germany and has succeeded in making it impossible to return to a time of centralized power. When we look more closely at the Bundesrat, the problems associated with federalism become clear.

Due to party politics, the Bundesrat no longer functions the way it was intended to. While regional concerns often take precedence over party concerns, legislation of the Bundestag majority party may occasionally be blocked by the opposition party in the Bundesrat. The party has become so important that the delegates of Rhineland-Palatinate pledged to "toss a coin" when undecided about which party to support (Economist, 1999). This type of politicization is unacceptable in a veto player as powerful as the German Bundesrat. However, politicization is unavoidable and the Bundesrat cannot be shielded from it without disallowing the use of parties in the länder, an option similar to actions taken by the Nazi party during the dying days of the Weimar Republic. The only other option would be to weaken the Bundesrat, a feat made impossible due to the veto power of the chamber. Thus, the problem with federalism is apparent: excessive gridlocking of legislation, when compared to a unitary state, and the overall slowing of the governing process. The restriction of the sovereignty of the federal government of Germany by the länder has reduced it to a semi-sovereign state which, together with the supra-national authority of the European Union, is

serving to reduce the state to mere managerial functions (Bräuninger and König, 1999).

Where Germany depends on the *länder* for policy implementation, the United Kingdom approaches policy from a more top-down perspective. Westminster dictates policy and oversees its implementation through a variety of organizations including such well-known quasi-governmental organizations as the National Health Service. The process of creating legislation is eased by the lack of a strong veto player in the upper chamber. This gives the majority in the House of Commons the ability to both choose the government and facilitate that government's enactment of legislation. Once again, party politics plays a large role, though here it is expected (Hancock et al, 2003). Prior to the Labour reforms, and to a degree currently, small regions of the United Kingdom felt underrepresented in national parliament; an impression that is unsupported by the facts. The Scots, the Welsh and the Irish were all able to select their MPs and thus were proportionally represented. However, their regions are so insignificant in scale in comparison to the dominant English, that while they were accurately represented, these regions still felt disenfranchised due to an inability to affect the legislative process. This is the failure of the unitary state. The tyranny of the majority is felt most strongly in a state such as the United Kingdom where small localities have no way to gain equal ground with the more populous regions. Without splitting England there is no possibility of an effective devolution of government (Bryant, 2003).

The difficulty with centralized government stems from the heterogeneity of the society. The

United Kingdom is made up of three well defined cultures in the Scots, the Welsh and the Irish, as well as the ill-defined English. The English themselves are split by region, with at least four separate identities: Anglo-British, Little English, English-English and Cosmopolitan English; each with their own definition of what it is to be English (Bryant, 2003). In the United Kingdom there are many well-defined, if informal, regional arrangements throughout its territory. Local governments work together to attract funding from the central government in Westminster as well the European government in Brussels. This development has allowed the United Kingdom to retain a surprising degree of stability while leaving a highly centralized government (Herschel and Newman, 2000). In some cases, particularly Wales, these semi-official arrangements govern more effectively than the disengaged central government. In this case, the government's hand can be seen in local affairs. The question of effective unitary governance becomes more important in areas such as Northern Ireland and Scotland.

Devolution and Federalism

Devolution was not taken as a step towards federalism and was not meant to damage the strength of the unitary state. Instead it was the pragmatism of the United Kingdom government that led it to grant devolved power to the regions of Scotland, Wales and Northern Ireland. Opponents of devolution claimed that it would hinder the English regions in the political arena. The fear is irrational, the English would dominate parliament based on sheer numbers, regardless of devolution. Were devolution to occur in

the eight regions of England they would be amongst the most populous in the entire European Union, clearly holding an advantage over other regional bodies in unweighted voting. Any devolution to these regions would likely be closer in structure to the Welsh Assembly rather than the Scottish Parliament. Thus, while governing will be improved due to tighter local control over policy and implementation, the central government will be giving away little power. Unlike the Scotland Act, the statute that created the Welsh Assembly explicitly outlines the only areas in which the Assembly has jurisdiction. Were the English regions to be granted semi-autonomy, the structure of government would likely be similar to that of Wales (Hopkins, 2004).

The drafters of the Scotland Act that created the Scottish Parliament took care to explicitly retain ultimate sovereignty and supremacy for the United Kingdom. In no way is the Scottish Parliament meant to act as an equal. In truth, Edinburgh is meant to be subordinate to Westminster. Yet, this dangerous step towards federalism may have backfired. For the United Kingdom there will be little way in which to retain control over Scotland if the parliament indeed defies Westminster. The Scots will look to the First Minister of Scotland as their leader rather than the Prime Minister of the United Kingdom. The three characteristics of federalism as stated in the *Law of the Constitution* are "the supremacy of the constitution, the distribution among bodies with limited and co-ordinate authority, [and] the authority of the courts to act as interpreters of the constitution." The Scotland Act effectively introduced the latter two elements into the United Kingdom through the creation of the

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Scottish Parliament and the incorporation of the Judicial Committee of the Privy Council in jurisdictional claims (Bogdanor, 1999). Though their supremacy has gone unchallenged thus far, Westminster must be careful to avoid testing its boundaries. Were the central government to lose in a power contest, it would set a dangerous precedent in dealing with Northern Ireland. Yet, for all these steps towards federalism it seems destined that the United Kingdom will remain unitary. No fair federal system could possibly level the field for effective negotiation between England, Scotland, Wales and Ireland without disenfranchising the majority of the English. The ethnic make-up of the nation is simply too unbalanced. England will continue to dominate the unitary government, but devolution to the regions will help to disrupt the hegemony of any one region (Bogdanor, 1999). In the United Kingdom the unitary state is the most reasonable way to govern.

In the White Paper, *Modernising [sic] Parliament: Reforming the House of Lords*, it is suggested that a more democratic and representative second chamber of parliament should be sought. Proponents argue that this is a necessary step towards good governance, and also towards federalism. The most obvious way to create a more democratic chamber would be to hold elections, direct or indirect, in order to select ministers to serve in the new House of Lords. The only rational way to distinguish voting constituencies would be to divide the United Kingdom into regions. Disregarding the fear of English dominance over the Scottish and Welsh constituencies, there are several other obstacles to effective governing. Such a chamber would allow

Scotland to send representatives that could then scrutinize and meaningfully shape English legislation, tipping the legislative balance in favor of Scottish Parliament, as English ministers are barred from affecting Scottish legislation. Another cause for concern would be the introduction of party politics into the upper house. With the dissolution of most hereditary peers, the Labour government effectively removed many conservatives from the House of Lords; to introduce party politics back into the chamber would be a mistake. Citing the example of the German Bundesrat, some English fear that this sort of federalist system would lead to legislative deadlock (Bogdanor, 1999). The English system of one primary chamber of parliament, the House of Commons, is more successful in quickly enacting legislation than the comparatively sluggish legislative process of the German federal state.

The European Union and Sub-National Organizations

In external matters, particularly those dealing with the European Union, the devolved regions of the United Kingdom have little or no bargaining power. Conversely, the German länder, wielding the threat of a Bundesrat veto, were able to effectively shape Germany's bargaining position on the Maastricht Treaty. Because of the fear that the European Union was encroaching on powers reserved for the länder, legislation was enacted that causes all changes to European Union treaties to be passed by a two-thirds majority in the Bundesrat. The länder were also instrumental in bringing about the creation of the Committee of the Regions. It is in this committee that regions of the United Kingdom find their small voice

in international affairs. The centrality of government in the United Kingdom heavily restricts their influence on foreign affairs in other respects (Bomberg and Peterson, 1998). The ability of the Bundesrat to deny the will of the Bundestag and the German government as well as shape the nation's foreign policy seems to overstep the bounds of an organization with no direct mandate from the people of Germany. While overly concerned with avoiding the centralization of power, the German Basic Law was unable to restrict the consolidation of power in the upper chamber.

This imposition of the Bundesrat's will on the international level clearly illustrates the faults of the German federal system. The Bundesrat cannot be managed. Whether it is overzealous land officials or fanatical party members, the Bundesrat is as susceptible to poor decision making as any parliament. The difference is that the länder hold a veto at two levels. In the Bundesrat the länder can block legislation from passing for the whole of Germany and at the land level they can sabotage legislation locally by not enforcing it. This power cannot be stripped, as reforms must pass the veto of the Bundesrat, and so the länder eternally hold veto over the rest of the government. In the case of the Maastricht Treaty, the Bundesrat clearly overstepped its bounds and yet, there was no consequence. There was no one to hold them accountable. The regions of the United Kingdom who felt infringed upon by the European Union were forced by Parliament to bend to the will of the nation. With small authority over their regions they are able to control European integration to a degree, but only with the consent of

Westminster. With this frame of reference the Bundesrat appears out of control.

Conclusion

The dangers of federalism for England are apparent and must be seriously considered before further devolution to the English regions occurs. The German government cannot be reformed without the approval of the länder. Therefore, rather than restructuring, Germany should focus on preventing further power grabs by the Bundesrat. This will become more important as European integration continues to focus on regional development initiatives. The government must regain its position at the negotiation table in the European Union, a position currently filled by the unelected Bundesrat (Bomberg and Peterson, 1998). While federalism has been a successful form of government for the Federal Republic of Germany, the government is becoming less stable and more prone to legislative deadlock due to party politics. Germany should try to avoid the creation of more regional organizations and instead work with those that exist. The overabundance of

small organizations will only serve to further slow the legislative process (Herrschel and Newman 2000).

The fear in England is that devolution to Scotland will have the same effect of creating a body that the central government cannot manage. Thus far the devolution experiment has met with success yet, like Germany, the United Kingdom would have little recourse were the Scottish Parliament to begin acting according to its own will. Short of military occupation of its own land the United Kingdom cannot control this element. The powers of the Welsh assembly and the government in Northern Ireland are much more restricted but, in the future, self-determination will become an issue for all three regions. This uncontrolled element poses a threat to the unitary state. The only way to prevent further loss of power is to avoid conflict with Scotland and avoid further devolution. Furthermore, reforms of the House of Lords must remain superficial. The upper chamber should avoid becoming a regional forum and should be denied any powers beyond supervision and scrutiny (Bogdanor 1999). The United Kingdom must learn from the German example: too much federalism can be a bad thing.

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